Cri A 670/98

CF0000060767

(2)

XII-189 (Jail) C J.P.R./9-94

DB (Jail)

APPEAL OF PRISONER

No 759/57 Name नारायणदास s/o नारायण प्रसाद s/o बंधनिया

Father's name दशरथ लाल साहू ग्राम किरना थाना-हिर्री-

Residence जिला-बिलासपुर (मध्य प्र.) Age 62 वर्ष

Sentenced to धारा-302 भा.द.सं. on 19-2-98

Under Section सश्रम कारावास एवम् by

5,000/- रुपये जुर्माना नापदायगी 3 माह अतिरिक्त कारावास

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the egal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not e obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received _____

3 Date on which Appeal sent 4-3-98

4 Whether the prisoner wishes to be represented or not. हां

No दण्डित बंदी क्रमांक 759/57 Name नारायणदास s/o नारायण प्रसाद s/o बंधनिया

Confined in _____ Jail बिलासपुर (मध्य प्र.) निवासी ग्राम दशरथ

No. _____ Dated _____ 1998

Forwarded to the रजिस्ट्रार माननीय उच्च न्यायालय जबलपुर (मध्य प्र.)

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अधीक्षक
जिला जेल बिलासपुर (म.प्र.)

Superintendent
जिला-जेल, बिलासपुर म.प्र.
Jail

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

_____

Date of receipt in Appellate court _____

(P. T. O.)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.670/97 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -
Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

26-2-2007:-

Shri R.K. Jain, counsel for the appellant.

Shri D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 19th February 1998 passed by the Sessions Judge, Bilaspur, in S.T. No.126/97 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 3 years.

Case of the prosecution is that wife of the accused namely, Radha Bai was doubting the character of the accused, therefore, in the night of 31st December, 1996 some quarrel took place between the accused and his wife Radha Bai, on which the accused attacked Radha Bai with axe, thereafter he informed PW-2 Dipak Raj at about 4 a.m. that he has committed murder of his wife, therefore, he should go and inform Kotwar and Sarpanch. PW-2 Dipak Raj informed landlord Dhanush Ram (PW-1), Sarpanch, Kunwar Singh (PW-3) and Anupdas Kotwar (PW-4), all of them came and asked the accused to open the door. On opening the door, they saw that body of deceased Radha Bai was lying on the wooden platform

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(Takhat), two brass idols were lying there, lamp was burning in front of those idols, there were blood spots on those idols. On enquiry, the accused informed those persons that he has sacrificed his wife in order to please goddess. Thereafter, PW-1 Dhanush Ram gave merg intimation (Ex.-P/13) based on which F.I.R. (Ex.-P/1) was registered. The station house officer left for place of occurrence, after giving notice to the panchas, prepared inquest Ex.-P/2 on the body of deceased Radha Bai. He took into possession 2 brass idols of goddess Durga and Kali under Ex.-P/3. One prescription of the doctor was taken into possession under Ex.-P/5. Axe, weapon of offence, was taken into possession under Ex.-P/6. One Baniyan and one Chaddi of the accused were taken into possession under Ex.-P/7. Clothes and articles of the deceased were taken into possession under Ex.-P/8. The body of Radha Bai was sent for postmortem examination to the C.H.C. Bilha where Dr. A.K. Sanyal (PW-5) conducted postmortem on the body of deceased Radha Bai and prepared postmortem report Ex.-P/10. He opined that cause of death is haemorrhage and shock. All the injuries were ante mortem in nature. Death was homicidal in nature. Site plan (Ex.-P/16) was prepared. Recovered articles were sent for chemical examination to the Forensic Science Laboratory, Sagar from where report Ex.-P/20 was received and serologist's report Ex.-P/19 was received.

After completion of the investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur where the prosecution in order to establish the charge against the accused examined 6 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the

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आदेश पत्रक (पूर्वानुबद्ध)

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prosecution evidence, stated that he was on duty since 8 p.m. in the night till 4.30 in the morning, when he returned after completing his duty, he saw that the doors of the room were opened and Radha Bai was lying dead. He does not know who has committed murder of his wife and he is innocent.

Learned Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

As far as homicidal death is concerned, Shri Jain has not disputed the same. Moreover, Dr. A.K. Sanyal (PW-5) has stated that on 31-12-96 he conducted postmortem on the body of the deceased. There were 4 injuries on her body. Injuries were ante mortem in nature and cause of death was haemorrhage and shock. Death was homicidal in nature. Apart from medical evidence, evidence of PW-1 Dhanush Ram, PW-2 Dipakraj, PW-3 Kunwar Singh Sahu and PW-4 Anup Das also establishes the fact that death of the deceased was homicidal in nature because when they reached, the accused opened the door, Radha Bai was lying dead on wooden platform (Takhat). Therefore, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused in crime in question is concerned, Shri Jain argued that the accused was on duty in the night. In the morning at about 4.30 a.m. he returned to his house and saw that doors of the room were opened and Radha Bai was lying dead, therefore, he has been implicated falsely.

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आदेश पत्रक (पूर्वानुबद्ध)

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On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In this connection, PW-1 Dhanush Ram has stated that the accused along with his wife used to reside in one room as his tenant and in another room one Dipak was residing as tenant. He was working as driver. At a distance of 10-12 feet he was residing in another portion of the house. In the fateful night the accused and the deceased were in their room. When he was sleeping in the night Dipak woke him up and informed that Narayan has committed murder of his wife. Therefore, he asked his neighbour Kotwar Anup to wake up, he informed him also. They were informed that accused Narayan has committed murder of his wife. Thereafter he went to the Sarpanch and informed him also. All these persons came to the room of the accused, door was bolted from inside, Kotwar got the room opened, they saw that the wife of the accused namely, Radha Bai was lying dead, her neck was cut and axe was lying on the ground stained with blood. On enquiry from the accused, he said that he has committed murder of his wife in order to please goddess. Thereafter they lodged report Ex.-P/1. PW-2 Dipak Raj has corroborated above evidence and stated that at about 4 a.m. the accused came to his room and informed him that he has committed murder of his wife. He also asked him to call landlord Dhanush, Kotwar and Sarpanch etc. of the village to inform the police. Therefore, he went to Dhanush and informed him about the incident. Thereafter, village Kotwar and Sarpanch were informed. Thereafter when Sarpanch came, he called the accused, on which the accused opened the door. They saw that the wife of the accused was lying in the room. PW-3 Kunwar Singh Sahu, Sarpanch of

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आदेश पत्रक (पूर्वानुबद्ध)

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the village, has stated that at about 5 a.m. in the morning Dhanush came to his house and informed him about the incident that Narayan has committed murder of his wife. Thereafter, he went to the house of Narayan where Kotwar was already present, thereafter Kotwar called the accused to open the door, on which the accused opened the door, asked them to come inside the room. The dead body of the deceased was lying on the wooden platform (Takhat). There were 2 idols of Durga on the side of head of the deceased. There was cut injury on the neck of the deceased. Blood was splashed on the ground and also on the wall. Clothes were drenched with blood. On enquiry, the accused informed that in order to please the goddess he has sacrificed his wife. Chaddi and Baniyan of the accused were stained with blood. Similar is the evidence of PW-4 Anup Das. Therefore, all these witnesses have stated that the body of wife of the accused was lying in a room on the Takhat. There was cut injury on the neck. Blood was splashed. The accused was in a room. On enquiry, the accused informed that he has committed murder of wife in order to please goddess. Even PW-2 Dipak Raj, neighbour of the accused, has stated that the accused came to his room to wake him up and said that he has committed murder of his wife. From the evidence of these witnesses, it is established that the accused made extra judicial confession before these witnesses. In order to ascertain truthfulness and voluntariness of the said fact, all these witnesses went to the room and saw that wife of the accused was lying dead. Extra judicial confession is supported by circumstantial evidence. The presence of the accused is established in view of evidence of all these witnesses, therefore, defence of the accused that he was on duty in the fateful night, when he returned at about 4.30 a.m. he found his wife dead is not established by the

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आदेश पत्रक (पूर्वानुबद्ध)

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accused. Except the evidence of these witnesses before whom he made extra judicial confession as also the fact that he was not present in the room, no other evidence has been adduced by the accused in order to establish the fact that he was on duty in the fateful night.

For the foregoing reasons, we are of the considered opinion that the trial Court has rightly convicted the accused for committing murder of his wife.

In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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